David Umpie @ Kalom & Anor v Superintendent of Lands & Surveys Samarahan Division

HIGH COURT (KUCHING) — LAND REFERENCE NO KG 2 OF 1994 – II
LAU BEE LAN J
9 NOVEMBER 2006

Land Law — Acquisition of land — Award — Application for reference to court — Assessment of compensation — Whether land was subject to restrictions and special conditions in the permit

The registered proprietors of the land in question ('the objectors') filed a Land Reference pursuant to s 56 of the Sarawak Land Code ('the Land Code'). By way of a notification order dated 17 April 1975, the Minister of Lands and Mineral Resources decided that the land in question was likely needed for the provision of a site for an establishment of a secondary school. A declaration made under s 48 of the Code declaring that the land was needed for the said purposes was published on 23 August 1979. On 13 December 1979, the respondent held an enquiry under s 51 of the Code to hear any claims for compensation that the objectors had in respect of their interest in the land. The respondent awarded compensation in the sum of RM10,200 for the land to be apportioned equally between the objectors. The objectors accepted the compensation sum under protest and requested to have the matter referred to the High Court. The objectors alleged that the compensation was inadequate as the respondent did not include compensation for the crops and the building (farmhouse) that was erected on the land and claimed a sum of RM76,823 for crops and RM13,800 for the building totalling RM90,623. The respondent contended that the award of the respondent was fair and reasonable as the land was subject to a Permit No 528/72 and by virtue of conditions (3) and (4) of the said Permit, no compensation is payable for the crops and the building.

Held, upholding respondent's award:

(1) One of the main arguments of the learned counsel for the objectors is that they are bona fide purchasers for value and that they became aware of the permit only at the enquiry conducted by the respondent. It is not disputed that the objectors purchased the said land from one Ajan ak Gek and that they did not carry out a search over the title of the land at the registry before they purchased the land. Further, it was not disputed by the objectors that if someone had carried out a search on the land at the Land Registry in 1978, the person would have been able to discover that the land was subject to a permit. As a prudent purchaser of land, the objectors ought to conduct a search at the Land Registry and if they failed to do so and proceeded with the purchase of the land, they did so at their own peril (see paras 9, 10).

(2) What is significant from paragraph 4 of the restrictions and special conditions in the permit is that the permit holder will not be compensated by the Government or by Ajan ak Gek (claimant to customary rights over the land) for the farmhouse and for the crops which she has left on the land on the termination of the permit (see para 14).

(3) The crops and the farmhouse were not improvements made by the objectors (owners) or Ajan ak Gek (predecessor in interest) at all within the two years before the notification was published under s 47(1). Therefore, there is no question of the objectors including the crops and farmhouse in the computation of the assessment of the market value of the said land at the material date of valuation (see para 18).

[Bahasa Malaysia summary

Pemilik-pemilik berdaftar kepada tanah yang dipersoalkan ('Pembantah-pembantah') telah memfailkan Rujukan Tanah menurut kepada s 56 Kanun Tanah Sarawak. Melalui perintah pemberitahuan bertarikh 17 April 1975, Menteri Tanah dan Sumber Asli memutuskan bahawa tanah yang dipersoalkan adalah diperlukan untuk tapak penubuhan sekolah menengah. Satu perisytiharan di bawah s 48 Kanun Tanah mengisytiharkan bahawa tanah yang diperlukan untuk tujuan tersebut telah diterbitkan pada 23 Ogos 1979. Pada 13 Disember 1979, responden telah mengadakan inkuiri di bawah s 51 Kanun Tanah bagi mendengar sebarang tuntutan untuk pampasan kepada Pembantah-pembantah yang mempunyai kepentingan ke atas tanah. Responden telah mengawardkan pampasan dalam jumlah RM10,200 untuk tanah yang akan diberikan sama rata antara Pembantah-pembantah. Pembantah-pembantah menerima jumlah pampasan dengan protes dan memohon supaya perkara ini dirujuk kepada Mahkamah Tinggi. Pembantah-pembantah mendakwa bahawa pampasan adalah tidak mencukupi kerana responden tidak memasukkan pampasan untuk hasil-hasil tanaman dan bangunan (rumah ladang) yang telah dibina di atas tanah dan menuntut jumlah sebanayak RM76,823 untuk hasil-hasil tanaman dan RM13,800 untuk bangunan yang kesemuanya berjumlah RM90,623. Responden mengatakan bahawa award yang diberikan responden adalah adil dan munasabah kerana tanah adalah tertakluk kepada Permit No. 528/72 dan mengikut kuasa syarat-syarat (3) dan (4) permit tersebut, tiada pampasan dibayar untuk hasil-hasil tanaman dan bangunan.

Diputuskan, award responden dikekalkan:

(1) Salah satu daripada pertikaian-pertikaian oleh peguamcara terpelajar untuk pembantah-pembantah bahawa mereka adalah pembeli-pembeli bona fide untuk nilai dan bahawa mereka hanya menyedari adanya permit setelah inkuiri dijalankan oleh responden. Ia adalah tidak dipertikaikan bahawa Pembantah-pembantah telah membeli tanah tersebut daripada seseorang bernama Ajan ak Gek dan bahawa mereka tidak menjalankan carian terhadap hakmilik tanah di pejabat pendaftaran sebelum mereka membeli tanah. Selanjutnya, ia juga tidak dipertikaikan oleh pembantah-pembantah bahawa jika seseorang telah menjalankan carian ke atas tanah di pejabat pendaftaran

pada 1978, seseorang itu akan dapat mengetahui bahawa tanah tersebut adalah tertakluk kepada permit. Sebagai pembeli tanah yang bijaksana, pembantah-pembantah hendaklah menjalankan carian di pejabat pendaftaran dan jika gagal berbuat demikian dan membeli tanah tersbeut, mereka melakukannya atas risiko mereka sendiri.

(2) Apa yang penting daripada perenggan 4 sekatan-sekatan dan syarat-syarat khas dalam permit adalah pemegang permit tidak akan dipampas oleh Kerajaan atau Ajan ak Gek (penuntut kepada hak-hak adat ke atas tanah) untuk rumah ladang dan juga hasil-hasil tanaman yang telah ditinggalkannya di atas tanah semasa penamatan permit.

(3) Hasil-hasil tanaman dan rumah ladang bukanlah pengubahsuaian yang dibuat oleh pembantah-pembantah (pemilik-pemilik) atau Ajan ak Gek (pendulu dalam kepentingan) sama sekali dalam masa dua tahun sebelum pemberitahuan dikeluarkan di bawah s 47(1). Oleh itu, tiada apa-apa persoalan oleh Pembantah-pembantah termasuk hasil-hasil tanaman dan rumah ladang dalam taksiran penilaian harga pasaran tanah tersebut pada masa material tarikh penilaian.]

Notes

For cases on award of acquisition of land, see *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1797–1840.

Legislation referred to

Sarawak Land Code ss 2, 19, 47, 48, 49, 51, 56, 60(1)(a), 60(1)(f), 60(2), 112, Sch 2

Fabian Sigar (John Shek, Sigar, Wei Yee & Co) for the objectors.
Fam Boon Kim (State Attorney-General's Chambers) for the respondent.
Donald Lam Joon Onn (Rahim & Co, Chartered Surveyors) for the valuers.
Siti Masbah bte Zaidel (Lands & Surveys Department).
Suhaimi Harun (Jabatan Penilaian dan Perkhidmatan Harta) for the assessors.
Chew Kwong Cheong (VPC Alliance (Sarawak) Sdn Bhd).

Lau Bee LanJ:

BACKGROUND

[1] This Land Reference is held pursuant to s 56 of the Sarawak Land Code (Cap 81) ('the Land Code'). By way of a blanket notification order under s 47 of the Land Code published vide GN 1232 dated 17 April 1975, the Minister of Lands and Mineral Resources decided that a parcel of land known as Lot 12 Block 18 Melikin Land District situated at Balai Ringin, Serian, measuring an area of four acres more or less (hereinafter referred to as 'the said land') is likely needed for the provision of a site for an establishment of a secondary school. A declaration made under s 48 of the Land Code declaring that the said land was needed for the said purposes was published on 23 August 1979 vide GN 2429. The registered proprietors of the said land are *David Umpie @ Kalom and Gana Ngadi* (hereinafter referred to as 'the objectors'). The co-proprietor, Gana Ngadi at the time of the hearing of the proceedings was deceased (died on 14 September 1995); on an oral application by the

learned Counsel for the objectors, Mr Fabian Sigar and without objection from the learned State Legal Officer then, Ms Susan Gau, was substituted with Ngadan ak Samuel based on the Letters of Administration (OBD p 29).

[2] Based on the notes of enquiry by the Superintendent of Lands and Surveys, Samarahan Division (hereinafter referred to as 'the respondent') on 13 December 1979, the respondent held an enquiry under s 51of the Land Code to hear any claims for compensation that the objectors had in respect of their interest in the said land. The respondent awarded compensation in the sum of RM10,200 for the said land to be apportioned equally between David Umpie and Gana Ngadi. The objectors accepted the compensation sum under protest and requested to have the matter referred to the High Court vide letter dated 3 January 1980 from their then advocate, Messrs Ibrahim & Co, Advocates of the respondent.

[3] The objectors alleged that the compensation is inadequate as the respondent had taken into account irrelevant considerations when it did not include compensation for the crops and the building (farmhouse) that were erected on the said land and is claiming for a sum of RM76,823 for crops and RM13,800 for the building totalling RM90,623. Basically, the respondent contended that the award of the respondent was fair and reasonable as the said land was subject to a permit No 528/72 (exh R4) ('the Permit') and therefore, by virtue of conditions (3) and (4) of the said permit, no compensation is payable for the crops and the building and urged the Court to uphold the respondent's award.

[4] Prior to the enquiry held by the respondent, the brief facts of the case were as follows. The first objector (OW1) testified in Court that both he and one, Gana Ngadi (deceased) bought the said land from the proprietor, Ajan Ak Gek. Prior to buying the said land, OW1 did not know the said Ajan Ak Gek. OW1 told the Court that he and Gana Ngadi had personally viewed the said land and during the inspection together with Ajan Ak Gek, they noticed that the said land was covered with various types of fruit trees, pepper vines and there was a farmhouse erected on it. At the time of inspection of the said land, Ajan Ak Gek did not inform both OW1 and Gana Ngadi that the said farmhouse therein and crops were planted by someone else. Based on the evidence given by OW1, the said land was purchased from Ajan Ak Gek and thereafter a Memorandum of Transfer was registered on 10 March 1978 (exh R1). Prior to the registration of exh R1, OW1 and Gana Ngadi were issued with a statement of awareness dated 10 March 1978 (exh R2) by the respondent's office. Thereafter OW1 and Gana Ngadi received the notices under s 47 and s 48 of the Land Code. Despite that, OW1 stated that he and Gana Ngadi still proceeded with the purchase of the said land as they love doing farming. OW1 admitted in evidence that no search was conducted at the Lands Registry Office to determine the status of the said land before the purchase of the said land. Thereafter, OW1 was transferred to Kedah and his then previous solicitors Messrs Ibrahim & Co, Advocates, Kuching took over this case. OW1 testified in court that he was notified by his counsel that they had received another notification under s 49 dated 7 November 1979 from the respondent's office requesting them to attend before the Superintendent of Lands & Surveys to state the nature of interests in the said land, their claims to compensation for such interests and their objections, if any. Through the transcript given to OW1

by his previous counsel Messrs Ibrahim & Co, Advocates, Kuching, OW1 further reiterated that during the meeting with the respondent on 3 December 1979, their claim to compensation for all the fruit trees and pepper vines plus the farmhouse erected on the said land was refused because there was a permit endorsed on the said land. In cross-examination OW1 agreed that the crops and fruit trees were not planted by him and Gana Ngadi and neither was the farmhouse built by them, the objectors, as all of these (crops and building) were found on the said land when it was purchased from Ajan Ak Gek. Thereafter, the enquiry was held by the respondent as mentioned above.

ISSUES

[5] The issues in this case are as follows:

(1) Whether the respondent in acquiring the objectors' said land had taken into account irrelevant considerations, in particular the permit, in awarding the sum of RM10,200 for acquisition of the said land from the objectors; and

(2) If the answer to the above is in the affirmative, whether the objectors are entitled to compensation for the crops planted and farmhouse erected thereon on the said land.

COURT'S FINDINGS AND EVALUATION

[6] According to *Siti Masbah binte Zaidel,* the Government Valuer attached to the Lands & Surveys Department Headquarters (RW), the permit is the same permit referred to in the notes of enquiry (item E) annexed to the Statutory Statement. In her valuation report (exh R3) dated 20 August 2004, the permit was issued by the Superintendent of Lands & Surveys First Division with the concurrence from the Resident First Division under r 19 of the Land Rules for a period of seven years from 16 October 1972 in the name of Chin Mui Cham. The restrictions and special conditions of the permit are set out as follows:

(1) THIS PERMIT IS NOT TITLE TO LAND, it is personal to the above-named holder and may not be transferred, charged or subleased.

(2) No permanent buildings shall be erected on the land occupied under this permit.

(3) In the event of the Government requiring the land during the currency of this licence, notice may be served on the holder, and on or before the expiration of such notice, the holder shall quit the land; and no compensation shall be payable to the holder.

(4) The land shall be left in substantially the same condition as that in which it was found and no compensation shall be payable by the Government or by the claimant to any customary rights over such land, for improvements, cultivation or any movable or immovable property left on the land after the expiration or termination of this licence.

(5) This licence is subject to any Municipal, Local Authority or Health regulations which may be in force during its currency.

A (6) The Superintendent may, in the event of the holder of this licence committing any breach of the terms or conditions of the licence, cancel the licence.

(7) Should the holder desire to continue to occupy the land after the expiration of this licence he shall, before the date of expiry, apply for a new licence. The Government does not bind itself to issue a new licence.

B

[7] As for the argument of the objectors that the permit was flawed due to the fact that the claimant written in exh R5, the Schedule of Cultivation (A) and the Schedule of Building (B) on the reverse side was Chin Hwung whereas the permit was issued by Chin Mui Cham and that the respondent failed to adduce sufficient C evidence that they were relatives, I am of the view that it is immaterial because at the enquiry the Permit holder, Chin Mui Cham was represented by Goh Leng Chua.

[8] The learned counsel for the respondent submitted that the effect of the permit was to allow the said Chin Mui Cham to occupy the said land as a licensee over the D said land without proprietary rights over the said land and in support relied on the definition of 'proprietor' under the Land Code. I agree with learned counsel for the respondent on this point as s 2 of the Land Code defines 'proprietor' to include 'the Government and any person entitled to an estate or interest in alienated land, whether such estate or interest is protected by registration or not, but does not E include any person holding or deemed to hold land by licence from the Government.' (emphasis added). Further support can be found in the specific wording of para 1 of the Restrictions and Special Conditions to the permit namely, 'THIS PERMIT IS NOT TITLE TO LAND' and this restriction and condition is statutorily provided in the form for permit in the Appendix to the Second Schedule F of the Land Code.

[9] One of the main arguments of learned counsel for the objectors is that the objectors are bona fide purchasers for value and that they had no notice of the existence of the permit which the said land was subject to and that the respondent G has failed in its duty to notify the objectors of such permit when the statement of awareness (exh R2) was first issued on 10 March 1978 and there was no endorsement stated in the issue document of title, Grant of State Land attached to the Extract of Title (exh D p 14 of OBD) and they became aware of the permit only at the enquiry conducted by the respondent.

H

[10] It is not disputed that the OW1 had admitted that the objectors purchased the said land from one Ajan ak Gek and that they did not carry out a search over the title of the said land at the registry before they purchased the said land from Ajan ak Gek (NOP p 12, lines 8–10). Further, it was not disputed by the objectors that RW testified during re-examination that if someone had carried out a search on said land I at the Land Registry in 1978, the person would have been able to discover that the said land was subject to a permit (NOP p 58, lines 8–10). As a prudent purchaser of land, the objectors ought to conduct a search at the Land Registry and if they failed to do so and proceeded with the purchase of the land, they did so at their own peril.

[11] As to whether there is a burden on the Registrar under s 112 of the Land Code to endorse the existence of a permit on the document of title, I agree with the reply given by learned counsel for the respondent that there is none. This is because a permit is issued under r 19 of the Land Rules contained in the Second Schedule to the Land Code. The form of a permit is statutorily provided in the Appendix pursuant to r 19(6) of the Land Rules and para 1 of the restrictions and special conditions state that a permit does not confer any proprietary interest over land. Therefore, the contention of the objectors that the respondent had failed them to notify them of such a permit is misconceived.

[12] Another argument of the objectors is that by virtue of the definition of 'land' under the Land Code which provides that 'land' includes things attached to the earth or permanently fastened to anything attached to the earth, they ought to be compensated for the crops and farmhouse. The point on the definition of land is not objected to by the respondent as based on RW's evidence in chief, para 18 purchase of land includes everything on the land. However, the respondent did not agree that the objectors should be compensated for the crops and farmhouse due to the conditions stipulated in paragraphs (3) and (4) of the permit.

[13] The learned counsel for the objectors submitted that the permit would naturally terminate upon the issuance of the document of title. However, he did not support this contention with any authority whatsoever. I agree with the learned counsel for the respondent that in the context of the permit in this instant case, it can only be terminated under three circumstances:

(a) if the Government requires the land during the currency of the permit (para (3));

(b) the permit expires and the permit holder does not apply for the permit to be renewed (para (7)); and

(c) the Superintendent cancels the permit (para (6)).

[14] Based on the notes of enquiry, it was stated that a notice to quit was given to Chin Mui Cham with a three months' extension, therefore the notice to quit became effective on 14 July 1979 (see p 5 and Appendix A of item E). Although, the permit was due to expire on 15 October 1979, in my view since a notice to quit was given prior to the expiration of the permit, it would mean that the termination of the permit became effective on 14 July 1979. It is not disputed by the parties that the amount of compensation to be assessed based on the market value of the land at the date of the publication of the notification under s 47 and the material date of valuation being 17 April 1975 pursuant to s 60(1)(a) of the Land Code. So it means that at the material date of valuation the permit was still in existence. It is to be noted that the restrictions and special conditions in paras (1) to (7) of the permit is applicable only to the permit holder, Chin Mui Cham. The learned counsel for the respondent had relied on the valuation report of RW and contended that by virtue of paragraph 4 of the restrictions and special conditions in the permit '[t]he land shall be left in substantially the same condition as that in which it was found and no

compensation will be payable by the government or by the claimant to any customary rights over such land, for improvements, cultivation or any movable or immovable property left on the land after the expiry or termination of the permit', there is no valuation for crops and building to be carried out in this report.' and 'therefore, for the land owner's interest, by virtue of condition 4 of the permit stated above, the pepper vines planted on the land is to be removed including the posts to which they were attached by the holder on the expiration or termination of the permit. Therefore, the registered proprietors cannot claim the compensation for pepper vines. In this case, the landowner's interests are mainly reversionary to full vacant possession' (emphasis added). With due respect to the learned counsel for the respondent, para 4 of the restrictions and special conditions of the permit does not require the permit holder to demolish any temporary building erected or uproot any crops grown on the land licensed to her for the reason that the paragraph explicitly state that all the permit holder needs to do is to leave the land 'in substantially the same condition as that in which it was found'. What is significant from this para 4 is that the permit holder will not be compensated by the Government or by Ajan ak Gek (claimant to customary rights over the said land) for the farmhouse and for the crops which she left on the said land on the termination of the permit (14 July 1979).

[15] It cannot be disputed that by virtue of the definition of 'land', the farmhouse and the crops found on the said land becomes the property of Ajan ak Gek upon the termination of the permit to Chin Mui Cham (since the evidence showed that the farmhouse and the crops were not demolished and uprooted at the time of enquiry on 3 December 1979) and was acquired by the objectors upon purchase of the said land from Ajan ak Gek on 25 February 1978 and thereafter upon registration of the Memorandum of Transfer on 10 March 1978.

[16] In rebuttal, the learned counsel for the respondent submitted that the improvements made to the said land made prior to the consent of the Superintendent after the publication of the s 47 notice were in respect of a permit issued to a third party and not the objectors; further OW1 had admitted that neither he nor the second objector planted the crops and therefore he cannot now invoke s 60(1)(f) for improvements made to the said land carried out by somebody else. On this point, I am of the view that s 60(1)(f) is not applicable in the context of this present case because that section refers to 'any improvement to the land made with the prior consent of the Superintendent after the publication of the notification under s 47(1)' [emphasis added]; based on the evidence in this case, it is not disputed that the farmhouse and the crops were not erected or planted respectively by Ajan ak Gek or the objectors but by the permit holder, Chin Mui Cham and it was done sometime between 16 October 1972 (date of issuance of the permit) and 17 April 1975 (date of the s 47 notification). In this present case, based on the Schedule of Cultivation (A) of exh R5, it shows there were two thousand pepper vines, two pineapples trees, two papaya trees (the number of crops not disputed) and the farmhouse (dwelling house) as described in the Schedule of Building (B) of exh R5 already in existence. The pepper vines were five years old while the papayas and pineapples were two years

and one year each whilst the farmhouse was five years old. There is a signature of Thomas Merud Karut who was the Surveyor in the Lands & Surveys Department and his signature was identified by RW based on the index page of D-Book D9808 (exh R9) and p 23 of D-Book 9808 (exh R10), below the notation 'Perhatian Sudah di hitong baharu. Tidak ada perubahan. Tanah ini dipunyai oleh Ajan ak Gek. Disewa nya kepada Chin Hwung. 'signed' 17 September 1976.' According to RW, the signature of the surveyor who did survey job 341/76 appears on the top of exh R5. The permit was issued to the permit holder on 16 October 1972 and, bearing in mind the age of the crops and farmhouse, it would mean that they were already in existence within the two years before the notification was published under s 47(17 April 1975).

[17] As I have mentioned earlier, the material date of valuation in arriving at the market value pursuant to s 60(1)(a) of the Land Code is as at 17 April 1975. Section 60(2) of the Land Code (the relevant portion) provides:

> (2) For the purposes of subsection (1)(a)— (a) if the market value has been increased by means of any improvement made by the owner or his predecessor in interest within two years before the notification was published under section 47(1) or, … such increase shall be disregarded unless it be proved that the improvement was made in good faith and not in contemplation of proceedings for resumption of the land being taken under this Part; (emphasis added)

[18] In the present case, based on the evidence, it is not disputed that the crops and the farmhouse were not improvements made by the objectors (owners) or Ajan ak Gek (predecessor in interest) at all within the two years before the notification was published under s 47(1),ie, 17 April 1975; therefore there is no question of the objectors including the crops and farmhouse in the computation of the assessment of the market value of the said land at the material date of valuation. In the circumstances, I uphold the respondent's award at RM10,200 with costs to the respondent except that the costs of the assessors is to be equally shared.

[19] In the event that the Court errs in its findings, for completeness, I now turn to the issue of the computation of the crops and the farmhouse. The objectors relied on the valuation of their Valuer, OW3, Donald Lam Joon Onn that is the crop valuation tabulated in Appendix B amounting to RM76,823 and for the farmhouse valuation for a built-up area of 960 square feet at RM18 per square foot (RM17,280) less depreciation of 20% (RM3,456) totalling RM13,800. The respondent relied on the valuation of RW and in respect of crops it is referred to in paras 12 to 14 and in respect of the farmhouse as contained in paras 15, 16 and 17 of her witness statement WSRW (encl 57). After conferring with the assessors, the Court is of the view that for the purpose of floor area of the farmhouse it will rely on the measurements given by RW, that is, 10.51m x 5.25m or 33.66 ft x 16.83 ft at para 9 of WSRW and for cost it will be calculated at RM12 per sq ft (rounded up figure) (RM9 per sq ft + RM14.40 (RM18 per sq ft less 20% depreciation) ÷ 2 = RM11.70). The total compensation for the farmhouse would be RM6,792. For the crops, the Court will take the higher end of the valuation of RW in para 12 of WSRW and therefore the total value of the crops would be RM40,012 and the breakdown is as follows:

2000 pepper vines —	RM20 x 2000	= RM40,000
Pineapple 2 trees —	RM1 x 2	= RM 2
Papaya 2 trees —	RM5 x 2	= RM 10

Award upheld.

Reported by Eugene Daniel Louis